

United States District Court
Central District of California

TESORO REFINING & MARKETING
COMPANY LLC,

Plaintiffs,

v.

PETROLEUM ONE, INC; HOSSEIN
WAISIRI; RENNA BAIRAMI; and
DOES 1-10, inclusive,
Defendants.

Case No. 8:13-cv-01713-ODW (RZx)

**ORDER GRANTING APPLICATION
FOR DEFAULT JUDGMENT [23]**

I. INTRODUCTION

Before the Court is Plaintiff Tesoro Refining & Marketing Company, LLC's ("Tesoro") Motion for Default Judgment. (ECF No. 23.) This breach-of-contract case was filed on October 1, 2013. Defendants Petroleum One, Hossein Wasiri, and Renna Bairami have not answered the Complaint and have failed to appear. The Clerk of Court entered default on January 22, 2014, and Tesoro filed this Motion for Default Judgment on January 24, 2014. For the reasons discussed below, the Court **GRANTS** Plaintiff's Motion for Default Judgment.

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II. FACTUAL BACKGROUND

Plaintiff Tesoro filed the Complaint against Defendants on October 30, 2013, alleging breach of contract/guaranty, unjust enrichment, fraud, open book account, and goods and services rendered. (ECF No.1.) All of the claims stem from Tesoro's allegation that Petroleum One failed to pay \$328,401.22 for fuel ordered between September 20, 2013 and September 29, 2013. (*Id.*)

Defendant Petroleum One, LLC is a California corporation that operates a retail gas station in South Gate, California. (Kim Decl. ¶ 2.) Defendant Hossein Waisiri is the sole shareholder and President of Petroleum One. (Grnja Decl. Ex A, C.) Defendant Renna Bairami is his wife. (Mot. 3.) Tesoro sells and markets gas under the ARCO brand as a franchisor. (*Id.* at 3–4.)

In June 2011, BP Petroleum West Coast Products, LLC ("BPWCP"), another ARCO franchisor, entered into four agreements with the Defendants: (1) a Contract Dealer Gasoline Agreement ("Gasoline Agreement"); (2) an Area Bonus Payment Reimbursement Agreement ("ABPR Agreement"); (3) an Unconditional Guaranty – Franchise Agreement; and (4) an Unconditional Guaranty for the ABPR Agreement. (Grnja Decl. ¶¶ 3–6.) In June 2013, BPWCP assigned its rights under all of these contracts to Tesoro. (*Id.*)

The Gasoline Agreement, between Petroleum One and BPWCP outlined Petroleum One's duties as an ARCO franchisee including: (1) ordering gas from BPWCP; (2) paying BPWCP for gas prior to delivery via Electronic Funds Transfer ("EFT"); and (3) indemnifying BPWCP for any claims arising out of the breach of the Gasoline Agreement. (*Id.* at Ex. A.) BPWCP could terminate the agreement if Petroleum One failed to pay in a timely manner. (*Id.*)

In the ABRP Agreement, between Petroleum One and BPWCP, Petroleum One agreed to return a \$200,000 "Area Bonus Payment" from BPWCP, if the Gasoline Agreement was terminated—for any reason—before ten years. (*Id.* at Ex C.)

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1 Under the Unconditional Guaranty – Franchise Agreement, Waisiri became
2 personally liable to BPWCP for all debts incurred by Petroleum One under the
3 Gasoline Agreement. (*Id.* at Ex B.) Paragraph 7 holds Waisiri responsible for
4 attorneys’ fees and costs “incurred by BP in enforcing the Guaranty.” (*Id.*)

5 The Unconditional Guaranty – Area Bonus Payment Reimbursement
6 Agreement between Waisiri, Bairami, and BPWCP, allowed BPWCP to demand
7 immediate payment from Waisiri and Bairami if Petroleum One breached the ABPR
8 agreement by failing to pay. (*Id.* at Ex. D.) Waisiri and Bairami also agreed to pay
9 attorneys’ fees and costs that arose from any claim under the agreement. (*Id.*)

10 On August 1, 2013—after BPWCP had assigned its contractual rights to
11 Tesoro—Tesoro entered into a Continuing Guaranty with Waisiri, which personally
12 obligated Waisiri for any debt Petroleum One owed Tesoro whether the liability arose
13 from a direct interaction with or a right assigned to Tesoro. (*Id.* at Ex F.) The
14 Guaranty mandated that Waisiri pay all costs, including attorneys’ fees, incurred by
15 Tesoro to enforce the Guaranty. (*Id.*)

16 Petroleum One placed fuel orders from September 20, 2013 to September 29,
17 2013 totaling \$382,401.22. (Compl. ¶¶ 19–30.) From September 20, 2013 to October
18 4, 2013, Tesoro received five unpaid invoices for the gasoline it delivered to
19 Petroleum One. (*Id.* at ¶¶ 31, 33–35.) Tesoro sent four emails to Waisiri between
20 September 30, 2013 and October 4, 2013 advising him that the invoices were returned
21 and demanding payment. (*Id.* at ¶¶ 32–35.) On October 7, 2013, Tesoro sent Waisiri
22 a Demand Notice informing him that Petroleum One was in default of the Gasoline
23 Agreement and demanding immediate payment of \$382,401.22. (*Id.* at ¶ 36.)

24 On October 11, 2013, Tesoro sent Petroleum One a Notice of Termination
25 advising Petroleum One that (1) the relationship was being terminated because
26 Petroleum One breached the Gasoline Agreement; (2) the termination of the Gasoline
27 Agreement triggered the repayment of the \$200,000 Area Bonus Payment; and

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1 (3) Tesoro was demanding a total of \$582,401.22 for the returned invoices and the
2 Area Bonus Payment. (*Id.* at ¶ 37–39.)

3 Waisiri and Bairami were personally served the Summons and Complaint on
4 December 21, 2013. (Kim Decl. Ex D, E.) After numerous attempts to serve
5 Petroleum One, the Court granted Tesoro’s request to serve process on the Secretary
6 of State, which was completed on November 20, 2013. (Kim Decl. ¶¶ 3–4.)
7 Defendants were required to answer the Complaint by January 13, 2014. They failed
8 to do so and default was entered on January 22, 2014. (ECF Nos. 19, 20.) Tesoro
9 now moves for entry of default judgment against all Defendants. (ECF No. 23.)

10 III. LEGAL STANDARD

11 Federal Rule of Civil Procedure 55(b) authorizes a district court to grant default
12 judgment after the default is entered under Rule 55(a). Local Rule 55-1 requires that
13 the movant submit a declaration establishing (1) when and against which party default
14 was entered; (2) identification of the pleading to which default was entered;
15 (3) whether the defaulting party is a minor, incompetent person, or active service
16 member; and (4) that the defaulting party was properly served with notice if required
17 by Federal Rule of Civil Procedure 55(b)(2).

18 A district court has discretion whether to enter default judgment. *Aldabe v.*
19 *Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980). Upon default, the defendant’s liability
20 generally is conclusively established and the well-pleaded factual allegations in the
21 complaint are accepted as true. *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-
22 19 (9th Cir. 1987) (per curiam) (citing *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560
23 (9th Cir. 1977)).

24 In exercising its discretion, a court must consider several factors: (1) the
25 possibility of prejudice to plaintiff; (2) the merits of plaintiff’s substantive claim; (3)
26 the sufficiency of the complaint; (4) the sum of money at stake; (5) the possibility of
27 dispute concerning material facts; (6) whether the defendants default was due to
28 excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil

1 Procedure favoring decisions on the merits. *Eitel v. McCool*, 782 F.2d 1470, 1471-72
 2 (9th Cir. 1986).

3 IV. DISCUSSION

4 A. Notice

5 The Court finds that Tesoro has complied with all the requirements of Local
 6 Rule 55-1. Waisiri and Bairiami were personally served on December 21, 2013.
 7 (ECF No. 11, 12.) Per court order, Petroleum One was served via the Secretary of
 8 State on November 20, 2013. (ECF No. 8.)

9 B. Eitel Factors

10 1. Possibility of Prejudice to the Plaintiff

11 The possibility of prejudice to the plaintiff exists when denying default
 12 judgment would leave the plaintiff without a proper remedy or alternate recourse for
 13 recovery. *See PepsiCo Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal.
 14 2002); *Landstar Ranger v. Parth Enter., Inc.* 725 F. Supp. 2d 916, 920 (C.D. Cal.
 15 2010). This factor favors default judgment because the defendants have failed to
 16 appear or offer a defense in this case, so the only way Tesoro can enforce the terms of
 17 the contract is through default judgment.

18 2. Merits of Plaintiff's Substantive Claim and Sufficiency of the Complaint

19 The second and third *Eitel* factors require plaintiff to "state a claim upon which
 20 they may recover." *See Phillip Morris USA, Inc. v. Castworld Prod., Inc.*, 219 F.R.D.
 21 494, 499 (C.D. Cal. 2003). To prevail on a breach-of-contract or breach-of-guaranty
 22 claim, plaintiff must prove (1) the contract, (2) plaintiff's performance or excuse for
 23 nonperformance, (3) defendant's breach under the contract, and (4) damages. *Wall*
 24 *Street Network, Ltd. v. New York Times Co.*, 164 Cal.App. 4th 1171, 1178 (2008).

25 Tesoro has offered evidence of the contracts listed above, its rights under the
 26 contracts as assigned by BPWCP, and that it performed its contractual duties by
 27 delivering fuel to Petroleum One and paying Petroleum One \$200,000. Tesoro's
 28 evidence establishes that collectively Defendants breached the Gasoline Agreement

1 and ABPR Agreement by failing to pay for fuel, and failing to repay the Area Bonus
2 Payment upon Tesoro's rightful termination of the Gasoline Agreement.

3 Tesoro has shown damages of \$382,401.22 under the Gasoline Agreement, and
4 \$200,000 under the ABPR Agreement. This factor favors default judgment.

5 3. *Sum of Money at Stake and Possibility of Disputed Material Facts*

6 The next *Eitel* factor favors default judgment when "the sum of money is
7 reasonably proportionate to the harm caused by the defendant's actions" and the
8 likelihood of a dispute over material facts is low. *Landstar*, 725 F. Supp. 2d
9 at 921–922; *See also WeCoSign, Inc. v. IFG Holdings*, 845 F. Supp. 2d. 1072, 1082
10 (C.D. Cal. 2012). Money that "naturally flows" as a result of the defendant's
11 contractual breach is considered reasonably proportionate to the harm. *See Walters v.*
12 *Statewide Concrete Barrier, Inc.*, No. C-04-2559 JSW (MEJ), 2006 WL 2527776, at
13 *4 (N.D. Cal. 2006). When the plaintiff in a "relatively straightforward" case has
14 filed a well-pleaded complaint with strong supporting documentation, it is unlikely
15 material facts will be in dispute. *See, e.g., WeCoSign*, 845 F. Supp. 2d. at 1082;
16 *HICA Educ. Loan Corp. v Warne*, No. 11-CV-04287-LHK, 2012 WL 1156402, at *3
17 (N.D. Cal. 2012).

18 Both factors favor granting default judgment here. Damages of \$582,401.22
19 and \$16,473.52 of attorneys' fees and costs flow naturally from Defendants breach of
20 the Gasoline Agreement and ABRP Agreement. Tesoro offers strong supporting
21 documentation in this straightforward breach-of-contract case, including signed
22 contracts and guaranties, invoices, and the demand letter sent to Waisiri.

23 4. *The Possibility of Excusable Neglect*

24 There is little possibility of excusable neglect and default judgment is favored
25 when the defendant fails to respond after being properly served. *See WeCoSign*, 845
26 F. Supp. 2d. at 1082. When the Secretary of State is properly served instead of the
27 defendant in a breach-of-contract case default judgment is favored if the plaintiff has,
28 made numerous attempts to locate the defendant, made a demand for payment due

1 under the contract, and defendant fails to respond to the complaint. *See Landstar*, 725
2 F. Supp. 2d at 922.

3 This factor favors default judgment. Waisiri and Bariami were properly served.
4 While Petroleum One was served through the Secretary of State, Tesoro made
5 numerous attempts to serve an agent, and sent Petroleum One's president, Waisiri,
6 numerous emails and a letter demanding payment.

7 5. *Policy for Deciding Cases on the Merits*

8 There is a strong preference for deciding each case on its merits whenever
9 "reasonably possible." *See Id.* However, this preference alone is not dispositive and a
10 defendant's "failure to answer plaintiff's complaint makes a decision on the merits
11 impractical if not impossible." *See PepsiCo*, 238 F. Supp. 2d at 1177. This factor
12 favors default judgment because defendants have failed to respond to Tesoro's
13 Complaint.

14 **C. Remedies**

15 Tesoro offers evidence to support a total award of \$598,874.74, including
16 damages of \$382,401.22 under the Gasoline Agreement/Guaranty, \$200,000 under
17 ABPR Agreement/Guaranty, (3) \$15,248.02 for attorneys' fees in accordance with
18 Local Rule 55-3, and (4) \$1,225.50 for costs.

19 The Court finds Tesoro's evidence including declarations, signed
20 contracts/guaranties, fuel invoices, demand letter to Waisiri and an accounting of
21 costs, sufficient to prove its damages.

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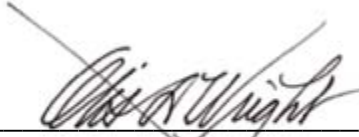
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1 **V. CONCLUSION**

2 For the reasons discussed above, the Court **GRANTS** Plaintiff's Motion for
3 Default Judgment and awards Tesoro a total of \$598,874.74. (ECF No. 23.)

4 **IT IS SO ORDERED.**

5
6 March 3, 2014

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9 **OTIS D. WRIGHT, II**
10 **UNITED STATES DISTRICT JUDGE**
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